

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-913-DB-2018 (O&M)
Date of decision : 08.11.2023

GOVIND -APPELLANT

VERSUS

STATE OF HARYANA -RESPONDENT

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms. Karandeep, Advocate for
Mr. R.S. Dhull, Advocate
for the appellant.

Mr. P.P. Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict of conviction drawn on 29.08.2018, upon, Sessions Case No. SC-39 of 2016, by the learned Additional Session Judge, Jhajjar. Moreover, the instant appeal is also directed against the order of sentence, as became drawn on 31.08.2018, by the learned convicting court concerned, whereby, it sentenced the convict/appellant in the hereinafter extracted manner:-

Offence	Rigorous Imprisonment	Fine	In default of payment of fine
302 of the Indian Penal Code (hereinafter referred to as the 'IPC')	Life	Rs.5,000/-	Simple imprisonment of One year
25/54/59 of Arms Act	Three years	Rs.1,000/-	Simple imprisonment of Six months.

2. Therefore, but obviously, the convict/appellant becomes aggrieved from the verdict of conviction (supra), as became rendered upon him, by the learned convicting court concerned, besides becomes aggrieved

from the order of sentence (supra), as became imposed upon him, vis-a-vis, the charges, as became drawn against him for offences punishable under Section 302 of the IPC, and, Section 25/54/59 of the Arms Act.

Factual background

3. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.PW10/A has been assigned. The narrations carried in Ex.PW10/A are, that on 12.06.2016, a VT was received in the control room, Jhajjar police station to the effect that three boys had opened fire in the village M.P. Majra in an alto car bearing no.HR-13D-0163. Upon this tip off, ASI along-with HC Parveen, HC Sandeep, Constable Rakesh immediately rushed to the place of occurrence i.e. M.P. Majra village. A huge congregation of people was found present at the spot. After waiting a lot, Pardeep son of Sh.Om Parkash came across to ASI who got recorded his statement to the effect that he was resident of Silana District Jhajjar and they were two brothers and four sisters. His sister was married with Jai Bhagwan son of Sh.Ran Singh. His sister Promila was having two sons and one daughter. Approximately 10-12 years back, husband of his sister Jai Bhagwan assassinated all his three children, due to which he was undergone the sentence by the court but during the undergoing of sentence, he committed suicide in the jail. Her brother-in-law (Jeth) Ved Pal and her mother-in-law Daya Kaur had thrashed his sister and thereafter, thrown out his sister Promila from the matrimonial house. They occupied the land of Promila and possessed her house also. Promila started residing with him and thereafter, she filed a suit for obtaining her share. Approximately 1½ years back, he along-with his brother Sandeep had taken some Panchayati land on contract basis. They

started residing at the house of Virender son of Sh.Bal Chand along-with his sister. His sister had come with flying colour in the pending case and she won the same. The mother-in-law of Promila and her brother-in-law were having grudge against his sister. Accordingly on 12.06.2016 in the morning at about 6.00 AM, while he was returning back towards his house after strolling here and there, his sister Promila had gone for throwing the garbage on the heap of garbage. In the meantime, a car was seen coming and swirled in front of the house of Virender, two young boys alighted from the car out of which one grasped his sister firmly and another opened fire upon his sister. He immediately rushed towards his sister. Both the boys entered into the vehicle and fled away from the spot scot-free. Blood was oozing from his sister. Blood was splattered over the garbage heap. She succumbed to all her injuries. He immediately raised the sound for help. His brother Sandeep immediately rushed to the place of occurrence. He was having a suspicion of causing the death of his sister by mother-in-law of Promila and brother-in-law Ved Parkash. He could not recognize the person who was on the driver's seat. He visualized the number of vehicle. It was HR-13D-0163. Accordingly, a prayer was made for initiating action against Daya Kaur and Ved Parkash. Consequently, the instant appeal FIR became registered.

Investigation Proceedings

4. After registration of case, prime investigation was conducted by ASI Jagbir. During investigation, place of occurrence was lopped off. Statements of witnesses were recorded. Postmortem of Promila corpse was got conducted. Thereafter, further investigation was conducted by CIA staff. During investigation, Amit son of Sh.Om Parkash and Govind son of Sh. Jai

Bhagwan were incarcerated on 18.06.2016. Thereafter on, 19.06.2016, they were produced in the court. One day police remand was obtained. Disclosure statements were recorded. In consequence of disclosure statement, one pistol and one motorcycle were recovered. Accused were produced on 20.06.2016 before the court. Further investigation was conducted by SI/SHO Kulbir Singh. On 04.07.2016 accused Sanoj alias Sonu was also incarcerated and produced in the court on 05.07.2016. Police remand was obtained upto 07.07.2016. In consequence of disclosure statement, one pistol and alto car was got recovered. Case property was dispatched for FSL report. Daya Kaur was later on declared innocent and placed in column no.2. NBW of Ved Parkash was obtained. After completion of all the required formalities, challan was prepared against the accused persons and submitted in the court.

Committal Proceedings

5. Through a committal order made on 15.09.2016, the learned Magistrate concerned, hence proceeded to commit the accused to face trial before the court of Session.

Trial Proceedings

6. On finding a prima facie case, the learned trial Judge concerned, on 23.12.2016, chargesheeted the accused for offences punishable under Section(s) 302/34 of the IPC, and, for offence punishable under Section 25 of the Arms Act, to which the accused pleaded not guilty and claimed trial.

7. The prosecution in support of its case examined as many as twenty two witnesses. Subsequently, the learned public prosecutor closed the prosecution evidence, and thereafter the learned Trial Judge drew proceedings

under Section 313 Cr.P.C, wherein, the accused pleaded innocence and claimed false implication.

Submissions of the learned counsel for the convict/appellant

8. The learned counsel for the convict/appellant submits, that since the ocular witnesses to the penal occurrence, resiled from their previously made statements in writing, therefore, she argues that primacy is to be assigned to their appositely rendered exculpatory testifications, than to the report of the Ballistic Expert concerned, wherein occur echoings, but suggestive, that the recovered firearm (Marked W/1) became used, for firing therefrom, the pellets (Marked BC/1 & BC/3), as became retrieved from the body of the deceased. She has further argued, that the impugned verdict of conviction is also liable to be interfered with, as the recovered firearm remained unproduced before the learned District Magistrate concerned.

Submissions of the learned State counsel

9. The learned State counsel has argued, that the impugned verdict of conviction and the consequent thereto order of sentence (supra), as became imposed upon the convict/appellant, by the learned trial Court concerned, do not require any interference, as the same become anchored upon a worthy appraisal of the evidence adduced by the prosecution, in support of the charged offences.

Analysis of the submissions of the learned counsel for the convict/appellant

10. During the course of investigation being conducted by the investigating officer concerned, into the crime event, the convict/appellant made a disclosure statement, thus before the investigating officer concerned, and, to which Ex.PW7/D is assigned. The contents of the said disclosure

statement are *ad verbatim* extracted hereinafter:-

“In the presence of following witness, on intense interrogation by I Insp., the above mentioned accused Govind, without any fear and coercion, suffered disclosure statement that “My co-villager Sanoj @ Sonu S/o Ved Parkash caste Jat R/o Badhsa is my friend. About 10-12 days ago Sanoj @ Sonu met me near AIMS Badhsa. He told that his anuty Parmila W/O Jai Bhagwan residing at MP Majra, with whom they have a land dispute case. Parmila has won the court case. She has to be murdered. Sanoj @ Sonu said you help me I will help you. After that I and Snoj @ Sony kept doing the reccee at MP Majra in the car of Sanoj @ Sonu. Sanoj @ Sonu show me the house of his aunty from far end. On 11/6/16, I and Sanoj @ Sonu came to the house of Babli, sister of Sonu at about 8 o'clock in the evening in the car of Sanoj @ Sonu. Sonu included his Bhanja (sister's son) Amit also in his planning. We had a planning that I and Sonu will travel to M.P. Majra in the car. Amit will go on his Motor Cycle. I and Sanoj @ Sonu will fire bullet shots to Parmila. If the car will stuck somewhere, we will flee from the place of occurrence riding the motorcycle. According to the planning, on 12/6/16, at 4 o'clock (4 A.M.) we started from Garhi Sampla for MP Majra in the vehicle. I and Sanoj @ Sonu travelled in the car and Amit arrived on his motor cycle. We reach MP Majra Bus Stand at about 5 A.M. Midway Sonu gave me one pistol loaded with five rounds. Sonu was having the pistol. I and Sonu kept sitting inside the car at MP Majra Bus Stand. Amit went on the bike, saw, came back and told that Parmila is throwing dung in the plot adjacent to her house. We left the bike at the bus stand and came near the plot of Parmila in the car. Amit was driving the car. I and Sonu got down from the car and fired bullet shots upon Parmila. I had fired three rounds. Thereafter we trio boarded the car and came to MP Majra Bus Stand. From there Amit took his bike and went away. I and Sonu came to Sampla via Beri travelling in the car. From there I boarded a bus and went to Bhiwani. Afterwards I came back. I do not know from where Sonu had brought the pistol. Sonu could tell about the car and the pistol he was having. Amit could tell about the Motor Cycle. I have concealed my pistol and two rounds in my house. None else I know about the same. I can accompany and get the same recovered. I can demarcate the place of occurrence. I know the places of Sanoj @ Sonu. I can accompany and get him arrested”. The disclosure statement of the accused was reduced into

writing. The disclosure statement was signed by the accused and witnesses.”

11. The hereinabove extracted disclosure statement is signed in Hindi by the convict/appellant. Since the convict/appellant failed to either ably deny, or, prove the said denial, through tendering into evidence the apposite exculpatory report, as prepared by the handwriting expert concerned, therefore, the confession of guilt, as made by the convict/appellant in the disclosure statement (supra), thus enjoys an aura of solemnity.

12. Nonetheless, the confession of guilt, if did not result in any recovery(ies) being made at the instance of the convict/appellant, thus to the investigating officer concerned, thereby the said confession of guilt would be a simpliciter or a bald confession, and thus, would become hit by the estopping principle, as engrafted in Section 24 of the Indian Evidence Act. However, since in pursuance to the drawing of disclosure statement (supra), the investigating officer concerned, ensured but at the instance of the convict/appellant, thus through a recovery memo (Ex.PW7/E), rather the recovery of the incriminatory pistol alongwith two rounds. Resultantly, the confession of guilt, as made by the convict/appellant, in his disclosure statement (supra), acquired immense evidentiary tenacity.

13. With this Court assigning creditworthiness to the disclosure statement (supra), and, to the consequent thereto drawn recovery memo (supra), whereby the recovery of the incriminatory weapon of offence, became effectuated, at the instance of the convict/appellant, to the investigating officer concerned, though may constrain this Court to uphold the verdict of conviction. However, the learned counsel for the convict/appellant has argued, that both the above exhibits are engineered as well as tailored by the

investigating officer concerned, but only to falsely implicate the convict/appellant. Therefore, the above made argument is also required to be adjudicated upon.

14. The prime reason for disconcurring with the above argument becomes sparked from the trite factum, that neither to the investigating officer concerned, nor to the recovery witnesses concerned, any suggestions became meted, thus suggestive that the said exhibits became drawn, through an ill stratagem, being deployed by the investigating officer concerned. Therefore, both the above exhibits do thus enjoy grave evidentiary solemnity.

Report of FSL

15. The result of the examination(s) being made vis-a-vis the recovered firearm, is embodied in Ex.PX. A perusal of the results of the apposite examination(s), as became made by the Ballistic Expert concerned, vis-à-vis, the items as became sent to him, in sealed parcels, results whereof are extracted hereinafter, do vividly reveal, that the 7.65mm fired cartridge cases (Marked C/1 & C/2), and, 7.65mm fired bullets (Marked BC/1 & BC/3) became fired from the firearm concerned. The reason for the said inference, becomes echoed by the Ballistic Expert, to emanate from the factum, that every firearm has its own individual characteristic mark(s).

“		<u>Result</u>
XX	XX	XX
<i>3. 7.65mm fired cartridge cases marked C/1 & C/2 and 7.65mm fired bullets marked BC/1 & BC/3 have been fired from Countrymade pistol marked W/1 and not from any other firearm even of same make and bore/caliber because every firearm has got its own individual characteristic marks.</i>		
XX	XX	XX”

16. The effect of the above incriminatory findings becoming recorded by the Ballistic Expert concerned, is but obviously, that thereby Ex.PX becomes the prime best scientific evidence. Consequently, it lends amplifying corroboration to the disclosure statement (supra), and, to the consequent thereto drawn recovery memo (supra).

17. Be that as it may, since the above is the best prime scientific evidence to prove the charges drawn against the convict/appellant. Resultantly, the said best scientific evidence disarms the evidentiary efficacy, if any, of the ocular witnesses to the crime event, rather reneging from the previously made statements in writing.

18. The said renegings are thus to be concluded to be result of the said witnesses becoming won over by the convict/appellant. Therefore too, their exculpatory testifications are worthless, nor as stated (supra), they acquired any primacy, nor they predominate the best scientific evidence (supra), as became adduced by the prosecution, to sustain the charges drawn against the convict/appellant.

19. Furthermore, if the recovered incriminatory material travelled in an unbroken and untampered condition to the FSL concerned, thus as revealed by the FSL report (Ex.PX), thereby there was no necessity for the production of the incriminatory weapon of offence, at the instance of the investigating officer concerned, rather before the District Magistrate concerned. Also, merely on non production of the said incriminatory weapon of offence, neither the efficacy of the disclosure statement (supra), as, made by the convict/appellant, nor the consequent thereto effected recoveries, as made through the recovery memo (supra), thus lose their apt creditworthiness.

Reinforcingly, since no evidence has been adduced by the defence, but suggestive, that there was open or naked tamperings with the incriminatory weapon of offence, or, with other incriminatory materials, in respect whereof the above extracted results, were made thereons by the FSL concerned, therefore too, the non production of the incriminatory items before the District Magistrate concerned, becomes completely insignificant, nor thereby the convict/appellant, is entitled to a verdict of acquittal.

Medical Evidence

20. PW17 Dr. Luv Sharma, who prepared the post-mortem report (Ex.PX), has also proven the said report in his examination-in-chief. The ante mortem injuries, as became noticed by the doctor concerned, to be occurring at the body of the deceased are extracted hereinafter:-

Sr. No.	Injuries	Marked	Injury Number
1.	An entry wound of size 1.5x1 cm was present over left eye region with left eyeball shattered and entering through the left orbital wall with fractured bony trabeculae showing blood infiltration. Left eye ball was punctured through and through along with shattering of left orbit, showing blood infiltration at bony trabeculae. It was situated 3 cm away from mid line and 146 cm above the left heel. It was going through duramater, left frontal and parietal lobe of brain through and through, left occipital lobe brain and on dissection a deformed metallic bullet of size 1x0.5 cm was recovered from left occipital area of brain. The direction of track was anterior to posterior, slightly left to right and downward. The track of wound was found ecchymosed.	No	1
2.	An entry wound of size 1.5x1.5 cm was present over tip of left shoulder. It was situated 15 cm away from mid line and 136 cm above the left heel. An abrasion collar of size 0.25 cm was present over superolateral border of the wound. It was going downward, posterior and medially passing through the muscle of shoulder, chest wall, 3 rd intercostals space of left side of chest, left pleura, upper lobe of left lung, pericardium, heart, diaphragm and left lobe of liver through and through. The left thoracic cavity contained about 1000 cc of liquid blood, pericardial cavity contained about 500 cc of liquid blood and peritoneal cavity contained about 1500 cc of liquid blood.	No	2

	On dissection, a metallic bullet of size 1x0.5 cm was recovered from the pelvic cavity. The track of wound was anterior to posterior, downward and medially. The track of wound was found ecchymosed.		
3.	A reddish abraded contusion size 1.5x1 cm was present over anterior aspect of right arm. It was situated 11 cm below the tip of right shoulder, 17 cm from midline and 130 cm above the right heel. On dissection underlying tissues were ecchymosed. Corresponding hole was present in the kurta.	No	3
4.	An entry wound of size 1.5x1.5 cm was present over anterolateral aspect of right thigh. It was situated 20 cm below the right anterior superior iliac spine, 15 cm from midline and 64 cm above the right heel. An abrasion collar of size 0.25 cm was present over the inferomedial border of wound. It was going medially upward and on dissection upper 1/3rd of shaft of right femur was found shattered showing blood infiltration at fractured ends. On further dissection a deformed bullet of size 1x0.5 cm was recovered from the muscle mass of thigh. The track of wound was anterior to posterior, upward and medial. The track of wound was found ecchymosed.	No	4

21. The reason as became assigned by the doctor concerned, vis-a-vis, the demise of the deceased becomes echoed therein, to ensue from the ante mortem firearm injuries, which are extracted hereinabove.

22. A reading of the ante mortem injuries (supra), discloses, that deformed metallic bullets of size 1x0.5 cm, became recovered respectively from the left occipital area of brain, from the pelvic cavity, and, from the muscle mass of thigh.

23. A reading of the hereinafter extracted relevant portion of Page 137 of the records of the learned trial Court concerned, also reveals, that the said pellets, as became noticed by the examining doctor concerned to become borne, on the body of the deceased, when they conducted autopsy thereons, thus became handed over to the police official concerned.

“...Any other detail: 1. A sealed packet bearing 3 seals containing three bullets recovered from the body of deceased.
2. X rays of the deceased done at the time of autopsy, six in numbers were

handed over to the police officials.”

24. The said sealed parcel is also deposed by the prosecution witness concerned to be kept in an untampered condition, in the Malkhana of the police station concerned, besides it is also spoken by the prosecution witness concerned, qua the said sealed parcel being sent in an untampered condition to the FSL concerned. Even a reading of the report of the FSL concerned reveals, that the said cloth parcels became received there, thus in an unspoiled and untampered condition. Therefore, but obviously, when the pellets (supra), as became extracted from the body of the deceased, by the examining doctor concerned, thus reached the FSL concerned in an untampered and unspoiled condition. Moreover, when after makings of the examinations thereof, the Ballistic Expert concerned did make the above conclusion, whereby, he connects the recovered firearm, thus with the said pellets, as became extricated from the body of the deceased, by the doctors concerned. Resultantly, unflinching evidence thus emerges for connecting the convict/appellant with the said fatal pellets, as became fired from the recovered firearm, upon, the body of the deceased.

25. In sequel, this Court firmly concludes, that the prosecution has thereby been able to successfully prove the user of the incriminatory firearm by the convict/appellant, upon, the person of the deceased. Resultantly also thereby, the effect of the ocular witnesses to the crime event, rather resiling from the previously made statements in writing to the police official(s) concerned, does become completely underwhelmed, besides becomes completely eclipsed.

Final Order

26. For all the reasons (supra), this Court does not find any merit in the instant appeal and is constrained to dismiss it. Consequently, the instant appeal is dismissed and the impugned verdict of conviction and the consequent therewith sentences (supra), as become imposed upon the convict/appellant, by the learned trial Judge concerned, are affirmed and maintained.

27. All pending application(s) stand disposed of accordingly.

28. If the convict/appellant is on bail, thereupon he is ordered to be forthwith taken into custody

29. Case property, if any, be dealt with in accordance with law, after the expiry of the period of limitation, for filing an appeal. The records be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

08.11.2023
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Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No